

LEGAL REVIEW NOTE

LC#: LC1103, To Legal Review Copy, as of February 7, 2013.

Short Title: Encourage manufacture of ammunition in Montana to ensure availability

Attorney Reviewer: Jaret Coles / Todd Everts

Date: February 13, 2013

CONFORMITY WITH STATE AND FEDERAL CONSTITUTIONS

As required pursuant to section 5-11-112(1)(c), MCA, it is the Legislative Services Division's statutory responsibility to conduct "legal review of draft bills". The comments noted below regarding conformity with state and federal constitutions are provided to assist the Legislature in making its own determination as to the constitutionality of the bill. The comments are based on an analysis of relevant state and federal constitutional law as applied to the bill. The comments are not written for the purpose of influencing whether the bill should become law but are written to provide information relevant to the Legislature's consideration of this bill. The comments are not a formal legal opinion and are not a substitute for the judgment of the judiciary, which has the authority to determine the constitutionality of a law in the context of a specific case.

Legal Reviewer Comments:

LC1103, as drafted, may raise potential constitutional issues associated with the Commerce Clause of the United States Constitution. Article I, section 8, of the United States Constitution enumerates the powers granted to Congress, including the power "[t]o regulate Commerce . . . among the several States" and to "[t]o make all Laws which shall be necessary and proper for carrying [that power] into Execution".

Section 8 of LC1103 provides as follows: "Pursuant to the legislative declarations of authority set forth in 30-20-102, only Montana and the department of environmental quality may regulate the chemicals used to manufacture ammunition components, and any use of those chemicals for those purposes may not be regulated in the state by any agency of the United States."

The United States Supreme Court has held that the Commerce Clause vests Congress with the authority to regulate three types of economic activity: (1) "the use of the channels of interstate commerce" (2) "the instrumentalities of interstate commerce" and (3) "those activities having a

substantial relation to interstate commerce". *United States v. Lopez*, 514 U.S. 549, 558-59 (1995). *See also Gonzales v. Raich*, 545 U.S. 1, 16-17 (2005).

Consequently, a potential issue is whether the state of Montana can declare that the use of chemicals used to manufacture ammunition components may not be regulated by the United States.

Requester Comments: See attached.

From: Gary Marbut-MSSA [<mailto:mssa@mtssa.org>]
Sent: Friday, February 15, 2013 4:35 PM
To: Coles, Jaret; Alan Doane
Subject: Legal review, LC 1103

Jaret,

It is the position of the State of Montana, as asserted in the brief by Montana Attorney General Steve Bullock to the Ninth Circuit Court of Appeals in *MSSA v. Holder*, "that the Montana legislature acted within its Tenth Amendment power when it enacted the Montana Firearms Freedom Act." Note that Section 30-20-102, M.C.A. mentioned in the Legal Review for LC 1103, and cited for authority in LC 1103, IS the Montana Firearms Freedom Act.

<http://firearmsfreedomact.com/updates/Montana%20Shooting%20Sports-9th%20Cir-Amicus-Br-zz.pdf>

With the permission of Sponsor Rep. Doane, please include this statement as a reply to the Legal Review in the legislative history for LC 1103.

Sincerely,

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Gary Marbut, president
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